IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 18 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

HASMUKHLAL MAGANLAL

Appearance:

MR AKIL KURESHI with MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 22/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question is referred for our opinion in respect of assessment year 1978-79 :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to deduction u/s. 5(1)(iv) of the Wealth-tax Act, 1957 ?"

2. The assessee had claimed deduction under Section 5(1)(iv) of the Wealth Tax Act, 1957 to the extent of Rs. 1,00,000/- in respect of the office and factory building belonging to a partnership firm in which the assessee was a partner. The Wealth-tax Officer disallowed the claim. The assessee, however, succeeded in appeal before the Commissioner of Wealth-tax. The said decision was confirmed by the Tribunal in appeal filed by the revenue. Hence, this reference at the instance of the revenue.

3. Before dealing with the submissions of the learned counsel for the revenue, it will be useful to refer to the relevant statutory provisions.

"4.(1) In computing the net wealth -

(a) ... ...

(b) of an assessee who is partner in a firm or a member of an association of persons (not being a co-operative housing society), there shall be included, as belonging to that assessee, the value of his interest in the assets of the firm or association determined in the manner laid down in Schedule III:

5. Wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee -

(i) to (iii) ... ...

(iv) one house or part of a house belonging to the assessee;"

4. The controversy may briefly be set out as under:-

While computing an individual's wealth who is a partner in a firm, under Section 4(1)(b) of the Wealth Tax Act, the partner's share in the assets of a partnership firm is to be included. According to the

assessee, the assets of the partnership firm really belong to all the partners, as partnership firm is nothing but a compendious collective term for partners. Hence, before determining the assets of the firm, exemptions under Section 5 of the Wealth Tax Act including one under clause (iv) of sub-section (1) are required to be applied even where net assets in question belong to the firm, and not to the individual partner concerned.

On the other hand, according to the revenue, exemptions under Section 5 of the Act are to be applied after determining the assets of the firm and before determining the wealth of the individual partner. Hence, if the properties covered by Section 5(i)(iv) belong to the firm and not to he partner concerned individually, the exemption under the said clause will not be available to the partner.

5. At the hearing of this reference, Mr Akil Kureshi, instructed by Mr Manish R Bhatt for the revenue has submitted that although there is a decision of this Court in CWT vs. Maheshkumar R. Patel, (1995) 216 ITR 272 taking the view in favour of the assessee, the Rajasthan High Court in Prakash Chand Modi vs. CWT, (1997) 225 ITR 541 has taken the view in favour of the revenue and has held that the partner is not entitled for the grant of exemption under Section 5(1)(iv) of the Wealth-tax Act in respect of a building owned by the partnership firm which, in fact, collectively belongs to the partners. The learned counsel has, therefore, submitted that the decision of this Court in Maheshkumar's case (Supra) requires reconsideration.

6. Though served, none appears for the respondent-assessee.

7. Having carefully gone through the decision dated September 2, 1994 of this Court in the case of Maheshkumar (Supra) reported in 1995 and also the decision dated May 10, 1996 of the Rajasthan High Court in the case of Prakash Chand Modi (Supra), we are not inclined to accede to the request made by the learned counsel for the revenue because the view taken by this Court in Maheshkumar's case (Supra) is in consonance with the decision of the Apex Court in M/s Juggi Lal Kamlapat Bankers, Kanpur vs. Wealth-tax Officer, Kanpur, (1984) 145 ITR 485. In the said decision, it has been held by the Apex Court that wealth-tax has been levied on the net wealth of an individual or a HUF meaning thereby the aggregate value of all the assets belonging to such

assessee minus all the debts owed by him. Under the definition of `assets' property of every description, movable or immovable is included and since a partner's interest in a firm either in his individual capacity or in his capacity as a karta of an HUF is property, the same would be includible in the expression `assets' which will have to be taken into account while computing the net wealth of such individual or HUF. While Section 4(1) deals with the computation of the net wealth of an individual and it also enacts a deeming provision in the sense that certain assets which do not in fact or in reality belong to the assessee but to some one else are also to be treated as belonging to the assessee and are to be included in the net wealth, but a careful reading and analysis of clauses (a) and (b) of sub-section (1) of Section 4 makes it clear that there is a great difference between the cases covered by sub-clauses (i) to (v) of clause (a) on the one hand and the cases covered by clause (b) on the other hand. Clause (a) refers to five situations in all of which the asset is held by some one other than the assessee (e.g. held by the spouse or minor child of such assessee to whom such asset has been transferred by such assessee directly or indirectly otherwise than for adequate consideration, etc.) and it is provided by section 4(1)(a) that such asset held by that some one else shall be treated as belonging to the assessee - a deeming provision in the real sense of creating a legal fiction. But under clause (b) it is provided that where the individual assessee is a partner in a firm it is the value of his interest in the firm determined in the prescribed manner that is to be treated as belonging to him and is includible in his net wealth. After giving the aforesaid analysis, the Apex Court has in terms held that clause (b) is not a deeming provision in the sense in which a deeming provision is made in clause (a). It cannot be said that the interest of a partner in a firm does not belong to him; it in fact belongs to him and no legal fiction is required for treating it as belonging to the partner. The proper way to interpret clause (b) would be that the deeming part of it relates to the quantum of his interest in the firm determined in the prescribed manner which is to be treated as belonging to him and includible in his net wealth.

8. In view of the aforesaid clear pronouncement of the Apex Court, it is obvious that in computing the value of his assets, a partner's share in the assets of a partnership firm will have to be included but before determining the value of the assets of the firm, the exemptions applicable under Section 5 such as under

clause (iv) of sub-section (1) of Section 5 will have to be granted.

8. The decision of the Rajasthan High Court in Prakash Chand Modi's case (Supra) decided in May, 1996 does not contain any reference to the decision of the Apex Court in Juggi Lal Kamlapat Bankers' case (Supra) which was reported in the year 1984 (145 ITR 485). It appears that the Rajasthan High Court followed its decision in Smt Ganga Devi vs. CWT, (1987) 166 ITR 325 which was purportedly based on the judgment of the Supreme Court in CIT vs. R.M. Chidambaram Pillai, (1977) 106 ITR 292. In Chidambaram Pillai's case (Supra), however, the question for consideration was whether the assessee, a partner in a firm, who in addition to a share in the profits was entitled to salary for service under the firm, was entitled to apportionment of the salary as part being attributable to agricultural income and whether the salary had to be apportioned in the same proportion as income in the tea estate was to be apportioned. It is thus obvious that the controversy there was entirely different and the same cannot be said to be relevant for deciding the controversy under the aforesaid provisions of the Wealth Tax Act, 1957. We therefore, see no reason to reconsider the view taken by this Court in CWT vs. Maheshkumar R. Patel, (1995) 216 ITR 272.

10. In view of the above discussion, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

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